

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LAVELL ANTHONY,
Plaintiff,

v.

CARDNALE WAY ACURA,
Defendant.

Case No.: 2:21-cv-02259-EJY

**ORDER
and
REPORT AND RECOMMENDATION**

Pending before the Court is Plaintiff's application to proceed *in forma pauperis* ("IFP"). ECF No. 1. Plaintiff's IFP application is on a Nevada State Court form rather than the IFP form for plaintiffs in the District of Nevada. *Id.* In addition, Plaintiff's Complaint fails to establish federal subject matter jurisdiction over his claim. ECF No. 1-1. As such, the Court denies Plaintiff's IFP application and recommends his Complaint be dismissed without prejudice.

Under 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action under *in forma pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). The court may deny *in forma pauperis* status, however, if it appears from the face of the proposed complaint that the action is frivolous or without merit. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Tripati v. First National Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987).

Plaintiff fails to establish this Court has subject matter jurisdiction over his claim. Subject matter jurisdiction arises from a federal question or diversity of the parties. 28 U.S.C. §§ 1331, 1332. Plaintiff, a Nevada resident, has not alleged diversity of citizenship between himself and Defendant Cardinale Way Acura. Further, Plaintiff's claims against Defendant allege state-law causes of action only. ECF No. 1-1. If Plaintiff wishes to pursue his claims against Defendant, he may do so in the Eighth Judicial District Court for Clark County, Nevada.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is DENIED without prejudice.

1 IT IS HEREBY RECOMMENDED that Plaintiff's Complaint (ECF No. 1-1) be dismissed
2 without prejudice for lack of subject matter jurisdiction to allow Plaintiff to proceed in Nevada State
3 Court.

4 Dated this 3rd day of January, 2022.

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6 ELAYNA J. YOUCHAH
7 UNITED STATES MAGISTRATE JUDGE
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9 **NOTICE**

10 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
11 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
12 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
13 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
14 held that (1) failure to file objections within the specified time and (2) failure to properly address
15 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
16 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
17 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
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